

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL
INDUSTRY AVERAGE WHOLESAL
PRICE LITIGATION

THIS DOCUMENT RELATES TO:

*US ex rel Ven-A-Care of the Florida
Keys, Inc. v. Abbott Laboratories, Inc.*
No. 07-CV-11618-PBS

MDL No. 1456
Civil Action No. 01-12257-PBS

Hon. Patti B. Saris

Magistrate Judge Marianne B. Bowler

JOINT MOTION TO SET REVISED, AGREED UPON BRIEFING SCHEDULE

Plaintiff Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”) and Defendant Abbott Laboratories Inc. (“Abbott”) have conferred about amending the briefing schedule for motions for summary judgment set out in the Court’s September 8, 2008 Case Management Order. The parties have also discussed a briefing schedule for Abbott’s anticipated Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction based on the False Claims Act’s public disclosure bar and *Daubert* motion to bar opinions from Ven-A-Care’s damages expert Mark Duggan. The parties jointly propose the following briefing schedule:

1. Motions and briefs shall be due as follows:
 - a. Motions shall be due August 21, 2009;
 - b. Responses shall be due October 23, 2009;
 - c. Replies shall be due November 20, 2009; and
 - d. Sur-replies, if any, shall be due December 4, 2009.
2. Page limits are set as follows:
 - a. Any motion for summary judgment shall not exceed forty pages;
 - b. Any response to a motion for summary judgment shall not exceed forty pages;

- c. Any reply to a motion for summary judgment shall not exceed twenty-five pages;
- d. Any sur-reply to a motion for summary judgment shall not exceed ten pages; and
- e. The parties shall be bound by the page limits established by the Local Rules for any other motions and briefs.

3. To the extent convenient for the Court, VAC requests the hearing on the pending motions in this case be held after, but in conjunction with, the hearing on Abbott's motion to dismiss and *Daubert* motion in the "DOJ" intervened case (Case No. 06-11337-PBS). Abbott requests that the Court hold the hearing after the Case No. 06-11337-PBS hearings, at a later date convenient for the Court. The parties agree that, when the aforementioned motions in this case are heard, Abbott's Rule 12(b)(1) motion to dismiss will be heard first.

WHEREFORE, Ven-A-Care and Abbott jointly request that the Court enter an order setting the briefing schedule and page limits set out in this motion.

Dated: July 16, 2009

Respectfully submitted,

/s/ C. Jarrett Anderson
Anderson LLC
208 West 14th Street, Suite 3-B
Austin, Texas 78701
Telephone: (512) 469-9191

James J. Breen
The Breen Law Firm, P.A.
3350 S.W. 148th Avenue, Suite 110
Miramar, FL 33027
Telephone: (954) 874-1635
Facsimile: (954) 874-1705

*Counsel for Plaintiff Ven-A-Care of the Florida
Keys, Inc.*

/s/ Eric P. Berlin
James R. Daly
Eric P. Berlin
Tara A. Fumerton
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585

Counsel for Defendant Abbott Laboratories Inc.

CERTIFICATE OF SERVICE

I, Tara A. Fumerton, an attorney, hereby certify that I caused a true and correct copy of the foregoing **Joint Motion To Set Revised, Agreed Upon Briefing Schedule** to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 16th day of July, 2009.

/s/ Tara A. Fumerton

Tara A. Fumerton